



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.14285 of 2020

P.Muthusamy

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome,
Chennai - 600 004.
2. The Sub Collector,
Harur,
Dharmapuri District.
3. The District Registrar,
Office of the District Registration,
Dharmapuri District.
4. The Sub-Registrar,
Harur,
Dharmapuri District.
5. M.Senthil

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to cancel the partition deed dated 04.10.2018 in document No.4703 of 2018, registered before the fourth Respondent, pursuant to the order passed by the second Respondent in proceedings dated 04.12.2020 in Na.Ka.No.1352/2019/A4, as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 within a time frame fixed by this Hon'ble Court.

For Petitioner	:	Mr.J.Pradeep
For Respondents 1 to 4	:	Mr.V.Veluchamy (Government Advocate)
For Respondent 5	:	No Appearance



O R D E R

The petitioner has filed the present writ petition seeking for a writ of mandamus to direct the respondents to cancel the partition deed dated 04.10.2018 in document No.4703 of 2018, registered before the fourth Respondent, pursuant to the order passed by the second Respondent in proceedings dated 04.12.2020 in Na.Ka.No.1352/2019/A4, as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, within a time frame as fixed by this Court.

2.The learned counsel for the petitioner would submit that the petitioner resides at Samiyankuttai Village, Veppanatham, H.Echambadi Post, Harur Taluk, Dharmapuri District and having a son namely Senthil who has been impleaded as 5th respondent herein. He is having agricultural land in Survey No.108/4, 109/4, 110/2 to an extent of 8 acres 59 cents in Samiyankuttai Village, Veppanatham, H.Echambadi Post, Harur Taluk, Dharmapuri District. The petitioner has succeeded the said agricultural land from his own funds and the said land is his self acquired property.

3. It has been further submitted that the petitioner who is a senior citizen, is having properties situated at Nos.108/4, 109/4, 110/2 to an extent of 8 acres 59 cents in Samiyankuttai Village, Veppanatham, H.Echambadi Post, Harur Taluk, Dharmapuri District, which were under the petitioner's control, custody, possession and enjoyment. While being so, the 5th Respondent who is the son of the petitioner herein executed partition deed along with Kanagavel and Ponnuvel, dated 04.10.2018 in document No.4703 of 2018, registered before the fourth respondent and no such partition deed was executed by the petitioner herein knowingly. The 5th respondent, fraudulently executed a partition deed, dated 04.10.2018 in document No.4703 of 2018, registered before the 4th respondent in his favour without even giving any share to the petitioner herein.

4. The learned counsel for the petitioner would further submit that the petitioner was taken to the office of the 4th respondent as if they wanted to sign him as witness and so, he signed without knowing anything of the content of the partition deed so created and forged for cheating the petitioner. The main grievance of the petitioner is that the 5th Respondent cheated the petitioner and he was made to sign as a witness, but actually the petitioner did not execute any partition deed, by not giving share to him. The petitioner made a detailed representation in this regard, for cancellation of the above said fraudulent documents to the respondents herein.



5. It has been further submitted by the learned counsel for the Petitioner that the petitioner's son transferred the property in his name by fraud, coercion and under influence. Thereafter, his son has not been maintaining the Petitioner herein. Hence, the petitioner made a complaint before the Sub Collector/2nd respondent herein on 14.10.2019, based on the aforesaid complaint, the 2nd Respondent in his proceedings dated 16.10.2019 in Na.Ka.No.1352/2019/A4, directed the 5th Respondent to pay a sum of Rs.3,000/- per month as maintenance to the petitioner herein. But the 5th Respondent herein has not complied with the order passed by the 2nd Respondent herein. Hence, the Petitioner again made a complaint to the 2nd Respondent to cancel the partition deed, based on the complaint given by the Petitioner, the 2nd Respondent conducted an enquiry and by his enquiry, it was found that the land is a self acquired property of the Petitioner. Thereby the 2nd Respondent cancelled the partition deed in his proceedings dated 04.12.2020 in Na.Ka.No.1352/2019/A4, as per section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and directed to settle the property to an extent of 4 acres in favour of the Petitioner. As per the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the first respondent is empowered to cancel the Partition Deed executed by the 5th respondent along with others after the Act came into force. The Section 23 of the Act deals with transfer of property to be void in certain circumstances. ie. Transfer of property to be void in certain circumstances:- (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

6. The learned learned counsel for the Petitioner would further submit that the provisions of the Act will come into operation only after the commencement of the Act. Admittedly, the fraudulent Partition Deed was executed on 04.10.2018 and the Act came into force with effect from 29.12.2007. Therefore, the Partition Deed executed in favour of the 5th Respondent was after the Act came into force. Therefore, the impugned order passed by the 2nd Respondent is sustainable and it has to be implemented by the 4th Respondent herein. The 5th Respondent who is the son of the petitioner is duty bound to maintain the Petitioner as he is his father. Instead of maintaining the petitioner, the 5th Respondent has transferred the property in



his name by under influence and deserted his father/petitioner herein, which itself shows that the malafide intention of the 5th Respondent against the petitioner herein.

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7. It has been further submitted that even though the Petitioner made a representation dated to cancel the partition deed executed in favour of the 5th Respondent, based on the order passed by the 2nd respondent, in his proceedings dated 04.12.2020 in Na.Ka.No.1352/2019/A4, as per section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the 4th Respondent did not cancel the partition deed for the reasons best known to him. The respondents 1, 3 and 4 are bound to cancel the partition deed as per the Senior citizens Act. However, the inaction of the respondents is highly arbitrary, high handed and against the Principles of Natural Justice. Hence, it is just and necessary to direct the Respondents to cancel the partition deed based on the order passed by the 2nd Respondent. The petitioner is left with no other remedy except to approach this Court under Article 226 of the Constitution of India. Hence, this Writ petition.

8.The learned Government Advocate for the respondents would submit that after the enquiry, the 2nd respondent has passed order in his proceedings dated 04.12.2020 in Na.Ka.No.1352/2019/A4, as per section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and hence, the respondents may be directed to consider the representation dated 24.08.2020 made by the petitioner herein based on the aforesaid order passed by the 2nd respondent herein.

9.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and perused the materials available on record.

10.Having considered the facts and circumstances of the case and submissions made by the learned counsel on either side, this Court hereby has directed the 3rd respondent to consider the representation dated 24.08.2020 made by the petitioner herein based on the order dated 04.12.2020 passed by the Sub-Collector/2nd Respondent herein in proceedings in Na.Ka.No.1352/2019/A4, as per Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and pass appropriate orders on it within a period of three months from the date of receipt of copy of this order in accordance with law after affording sufficient opportunity to the 5th respondent who is the son of the petitioner herein.



11. With the aforesaid directions, this Writ Petition is disposed of. Consequently connected miscellaneous petition is closed if any. There shall be no order as to cost.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Lbm

To

1. The Inspector General of Registration,
Santhome, Chennai - 600 004.
2. The Sub Collector,
Hosur,
Dharmapuri District.
3. The District Registrar,
O/o the District Registration,
Dharmapuri District.
4. The Sub Registrar,
Hosur,
Dharmapuri District

W.P.No.14285 of 2020

PCH (CO)
K.RK. (10.11.2021)